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July 3, 2019

Berenice Garcia
THE MONITOR
1400 E. Nolana
McAllen, Texas 78504

Issued Via E-mail: bereniceg@themonitor.com

RE: *Palmview Wastewater Collection System (Phase-I, Group A&G)*

Dear Ms. Garcia:

I represent O.G. Construction Co., LLC ("O.G.") in any matters arising from its contract (the "Contract") with the Agua Special Utility District ("Agua SUD") and the Palmview Wastewater Collection System (Phase-I, Group A&G) project (the "Project"). The intent of this letter is to provide you with information to put in context the events and comments discussed in your article of June 29, 2019 pertaining to the Project, Agua SUD, and O.G (the "Article").

First, we would like it to be known that the first time O.G. was made aware that a third party would be entering the jobsite to inspect ongoing work was when the Article hit the newspaper. In addition, Agua SUD still has not reached out to O.G. to inform him of any issues with his work. This is undoubtedly because, pursuant to the Contract, the inspection by Southern Trenchless was not done on completed and accepted work, and, therefore, Agua SUD has no basis to notify O.G. of a defect. Pursuant to the Contract, before any inspection is done, O.G.:

“ . . . shall give Owner’s Representative and ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.”

However, O.G. never gave Agua SUD any such notice of “readiness” because the work in fact is not ready for inspection, or otherwise complete. Therefore, Agua SUD has again failed to adhere to the terms of the Contract.

Furthermore, it has come to our attention that the inspection and resulting presentation to Agua SUD performed by Southern Trenchless was solicited by Eddie Saenz and used to justify awarding Southern Trenchless a contract in the amount of \$238,691.00 for future inspections. If Agua SUD were truly acting in a fiduciary capacity for the benefit of its constituents, it would not have agreed

to award such an expensive contract on the basis of an inspection of incomplete work. Obviously, to justify the expense of hiring Southern Trenchless, Agua SUD should have demanded that Southern Trenchless inspect completed work that has been submitted to Agua SUD for inspection. Instead, Agua SUD solicited Southern Trenchless to inspect areas of the Project that were being worked on that same day. Both common sense and the terms of the Contract call for a different procedure. However, neither were followed here. As discussed further below, we believe that the presentation and resulting media involvement was actually an effort to retaliate against O.G. for pending claims for breach of contract that O.G. has against Agua SUD, as well as for Agua SUD's resentment toward the Texas Water Development Board (the "TWDB") and O.G. after the TWDB refused to allow Agua SUD to bid the Project in contravention of the Texas Government Code.

The following is a list of the manholes that were allegedly selected at random by Agua SUD for inspection by Southern Trenchless and a brief description of each manhole's status:

- Manhole 1: Line G7-b Station 21+25.65:
 - This manhole had caliche in it because the manhole is not complete and the roadway is open to traffic. When we are ready for a test, we of course complete the manhole and ensure it is cleaned and sealed. After the City paves the roadway, we have to return to pour concrete around the manhole and we will also check again to ensure it is clean. Then we turn it over to Agua SUD.
- Manhole 2: Line G-6 Station 0+00 Plan Sheet G-44:
 - This is the manhole that my men were working inside of that day and left to the yard to get materials. They left the shovel inside of it but returned to finish the work the same day. While they were gone, the photo presented to the Board was taken. Obviously, this manhole is not complete and has not been turned over.
- Manhole 3: Line G-1 Plan Sheet G-7:
 - This manhole also is not complete and has not been turned over to the Board. Further, it was damaged by the City of Palmview's paving contractor Earthworks Enterprise LLC. Their paving machine hit the manhole cover and it fell into the manhole. They are aware of it, and they asked us to repair it but we told them we could not because Earthworks is responsible. They need to repair it and let us know when ready so we can inspect that repair and proceed with completing the manhole.

Given these facts, it appears that the true intent of Agua SUD's solicitation of a public presentation by Southern Trenchless and resulting media involvement was not meant to be an honest assessment of the work it contracted for. Instead, it was intended to, and in fact does, unjustifiably damage O.G.'s business reputation ahead of O.G.'s pending claims for breach of contract—notice of which was given to Agua SUD *six weeks* ago.

In regards to the notion that O.G. was forced on Agua SUD, on January 18, 2017—acting pursuant to section 2269.101 of the Texas Government Code—Agua SUD made the Project open for bid. Four bids were considered, the lowest of which was from O.G. Pursuant to Texas Government Code 2269.105, in order for Agua SUD to select the lowest responsible bidder, it was required to make public its basis for such a selection no later than the 7th day following the award of the contract. Because the contract was awarded on February 16, 2017, that timeline expired February

23, 2017. However, Agua SUD made no such records public, and indeed, did not formulate a basis for its award to the second lowest bidder. Furthermore, on February 15, 2017, the Engineer for the Project (i.e., S&B Infrastructure, Ltd.) issued its *Bid Documentation Review & Recommendation of Award* to Agua SUD recommending that the contract be awarded to O.G. as the lowest responsible bidder.

Not surprisingly, when the TWDB became aware that Agua SUD acted in violation of the law, it sent Agua SUD a request for the basis for its award of the Contract to the second lowest bidder. Agua SUD was unable to adequately respond to the request from the TWDB. Agua SUD Director Loyd Loya is quoted in the Article as saying “. . . we were forced with this company. . .” and “. . . I said something is going to happen.” As you now know, O.G. was not forced on Agua SUD.; Agua SUD was forced to follow the Texas Government Code. Further, these forebodings from Mr. Loya were not raised to the TWDB when the bidding procedure was being scrutinized by the TWDB. As a result, the TWDB ordered Agua SUD to select the lowest responsible bidder, which was O.G. Agua SUD should not be allowed to create issues with O.G.’s work for the purpose of manufacturing its own “I told you so” vindication ahead of pending claims from O.G. The public should be apprised of this background as well as an understanding of the basis for why Agua SUD chose to spend \$238,691.00.

We hope that this puts your story in context. If you have any questions, please call me and I would be happy to discuss this letter further.

Very truly yours,

LAW OFFICES OF RAMON GARCIA, P.C.

A handwritten signature in black ink, appearing to read 'Orlando F. Garcia', with a stylized flourish at the end.

Orlando F. Garcia
Attorney at Law